

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

November 2, 2021 at 1:30 p.m.

1.	<u>18-23006-E-13</u> <u>JHK-1</u>	CARLA GALBRAITH Kristy Hernandez	MOTION FOR RELIEF FROM AUTOMATIC STAY 9-15-21 [67]
 CREDIT ACCEPTANCE CORPORATION VS.			

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 15, 2021. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is denied.

Credit Acceptance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Nissan Rogue, VIN ending in 6246 ("Vehicle"). The moving party has provided the Declaration of Danielle Washington to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Carla T Galbraith ("Debtor").

In the Motion, Movant states with particularity (as required by Fed. R. Bankr. P. 9013) the following grounds upon which the relief is based (identified by paragraph number used in Motion):

3. On January 2, 2017, Debtor entered into a Retail Installment Sale Contract for the purchase of a 2016 Nissan Rogue, the Vehicle.
4. Movant, all time period relevant to the present Motion, Movant was the lienholder on the Vehicle purchased by Debtor.
5. Debtor's confirmed Chapter 13 Plan provides for Movant's secured claim, which is to be paid as provided under the confirmed Chapter 13 Plan in this case.
6. On May 24, 2021, Debtor's counsel notified Movant that the Vehicle was involved in a collision and was declared a total loss. Movant contacted the insurance company and was told that the insurance "settlement" payout on the claim relating to the accident was \$11,928.73.
7. Movant desires relief from the automatic stay to obtain the insurance proceeds and apply the proceeds to what Movant computes the obligation of Debtor to be based on non-bankruptcy law, computing that amount to be \$11,219.85.

At this juncture the court notes that the grounds stated in the Motion while admitting that there is a confirmed plan in the 2017 case, grounds are not alleged why Movant can ignore the terms of the CONFIRMED CHAPTER 11 PLAN and that such Plan BINDS MOVANT and DEBTOR to the terms of the CONFIRMED CHAPTER 11 PLAN.

The Motion continues in a section titled "GROUNDS FOR RELIEF" (emphasis in original) restarting the number of paragraphs (it appearing that the Motion is a cut and paste of a form document into another drafted document):

Second 1. The Vehicle was involved in a collision and declared a total loss. Movant seeks relief to apply the proceeds.

Second 2. Movant requests that the court waive the 14-day stay of enforcement arising under Federal Rule of Bankruptcy Procedure 4001(a)(3) since the Vehicle was involved in an accident and declared a total loss by the insurance company.

Motion, Dckt. 67.

Thus concludes the grounds for relief from the stay which Movant states with particularity by which it should be grounds relief from the automatic stay and seek payment of the insurance proceeds and payment of its claim, which is provided for in the Plan in this case, on terms other than those of the Confirmed Chapter 13 Plan.

Based on the grounds stated, and admitted, in the Motion by Movant, the court would have to deny the Motion, and thereby the responding parties would be entitled to seek prevailing party fees (whether statutory or contractual) as provided in Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054, 9014(c).

Movant provides a points and authorities which, while not being a pleading stating the grounds, states the legal grounds based upon Movant and Movant's counsel good faith research and allegation (Fed. R. Bankr. P. 9011) for this court giving relief from the stay so that Movant can obtain the insurance proceeds and pay itself based on non-bankruptcy grounds rather than the terms of the Confirmed Chapter 13 Plan which binds Movant and Debtor and modifies the terms of the pre-petition contract.

The authorities cited by Movant consist of quoting 11 U.S.C. § 362(d)(1) referencing that the court may terminate or modify the stay for cause, and requesting that the 14 day stay of enforcement provided for in Federal Rule of Bankruptcy Procedure 4001(a)(3) be waived so Movant can immediately take the insurance proceeds as payment rather than as provided in the Confirmed Chapter 13 Plan.

Movant does not address in the Motion or Points and Authorities the effect of there being a Confirmed Chapter 13 Plan in this case. The long established law in this Circuit that the confirmed bankruptcy plan binds creditors and debtor, as well as modifies (contingent on completion of the Confirmed Plan) the contract/terms of obligation of the debtor is stated in *Trulis v. Barton et al*, 107 F.3d 685, 691 (9th Cir. 1995), discussing it in the Chapter 11 context:

Once a bankruptcy plan is confirmed, it is binding on all parties and all questions that could have been raised pertaining to the plan are entitled to *res judicata* effect. See 11 U.S.C. § 1141(a). *Res judicata* bars a party from bringing a claim if a court of competent jurisdiction has rendered final judgment on the merits in a previous action involving the same parties and claims. *In re Int'l Nutronics, Inc.*, 28 F.3d 965, 969 (9th Cir.), *cert. denied*, 513 U.S. 1016, 130 L. Ed. 2d 493, 115 S. Ct. 577 (1994).

As noted by the Trustee in his opposition, the provisions of 11 U.S.C. § 1327(a) expressly state, "The provisions of a confirmed [Chapter 13] plan bind the debtor and each creditor" See *Bullard v. Blue Hills Bank*, 575 U.S. 496, 502 (2015); *United Student Air Funds, Inc. v. Espinosa*, 559 U.S. 260, 275 (2010); *HSBC Bank USA N.A. v. Blendheim (In re Blendheim)* 803 F.3d 477, 486-487 (9th Cir. 2015); and *Great Lakes Higher Education Corp. v. Pardee (In re Pardee)*, 218 B.R. 916, 926 (B.A.P. 9th Cir. 1998).

TRUSTEE'S OPPOSITION

Trustee filed an Opposition on October 12, 2021. Dckt. 74. Trustee opposes the Motion on the grounds that:

1. Movant is included in Debtor's confirmed plan as Class 2(A) and has filed Proof of Claim 1-2 in the secured amount of \$20,496.85 and \$576.28 in arrears.
2. The Trustee has disbursed a total of \$20,377.55 - \$18,730.55 secured (presumably principal) and \$1,647.00 interest (also secured) - to Movant.
3. A Paid in Full letter dated September 28, 2021 was received from Movant by the Trustee.

4. Movant, who sent the Paid in Full letter also sent a refund to Trustee in the amount of \$1,766.30.
5. Movant claims the payoff under “non-bankruptcy law” is \$11,219.85, however, the parties are bound by the confirmed plan.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 19, 2021. Dckt. 77. Debtor joins the Trustee in opposition on the basis that creditor should be bound to the terms of the confirmed Chapter 13 Plan in this case.

DISCUSSION

The court’s review of the Motion and supporting pleadings, and the oppositions that the Motion necessitated, establish that the Motion does not state grounds for which relief may properly be granted. In the Motion itself, Movant states there is a Confirmed Chapter 13 Plan that provides for Movant’s claim. That fact is brushed aside and demand is made for an order to allow Movant to take all of the insurance proceeds.

11 U.S.C. § 362(d)(1)

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Here, Movant states that 362(d)(1) provides adequate ground for relief. Movant claims their “for cause” exists based on the total loss of Movant’s secured collateral. Dckt. 69. The secured collateral is insured and Movant, as the loss payee under the insurance policy, seeks recovery only from a third party with respect to the insurance proceeds. *Id.*

Movant, however, fails to take into account that they are a Class 2(A) creditor under Debtor’s plan. Additionally, as evidenced by Movant’s Information Sheet, Debtor is not past due on any payments, whether pre-petition or post. Dckt. 72. In fact, as evidenced by Trustee’s opposition and supported Declaration of the Chapter 13 Trustee, Debtor has paid Movant in full under the plan. Dckts. 74, 75.

As discussed above, 11 U.S.C. § 1327 (a), as well established Ninth Circuit and U.S.

Supreme Court Decisions, the provisions of a confirmed plan bind the debtor to each creditor. Under 11 U.S.C. § 1327 (b), property of the estate vests back to the debtor, unless the plan or order confirming the plan provides otherwise. Because Movant has been paid in full under the plan, and due to the binding provisions of 11 U.S.C. § 1327, Movant has no claim to the settlement amount from the collision.

Altered Request for Relief In Response to Oppositions

When faced with the Oppositions of the Chapter 13 Trustee and Debtor based on well established decisional law, Movant filed a “Reply,” Dckt. 79, stating/admitting:

- A. Movant has received the Insurance Proceeds of \$11,219.85.
- B. Movant applied the Insurance Proceeds to the obligation not as provided under the Chapter 13 Plan and sent only \$1,766.30 of the insurance proceeds to the Chapter 13 Trustee.
- C. In light of the Opposition filed by the Trustee and Debtor, Movant now “apologizes to the court and other parties in this case for the error.”
- D. On October 21, 2021, (nine days after the Trustee’s Opposition was filed), a check in the amount of \$10,162.43 was sent to the Trustee by Movant.
- E. Movant requests that the court “allow” the Trustee to hold the \$10,162.43 in insurance proceeds pending Debtor’s completion of the Chapter 13 Plan.

In this case, there is a confirmed Chapter 13 Plan in which Movant’s claim is provided for as a Class 2 Claim. Confirmed Chapter 13 Plan, Dckt. 7. The Plan provides for paying the claim over sixty months with 4.5% interest. (While not seeking to reduce the amount of the claim, the Plan does reduce the interest rate from the “commercially reasonable” 22.98% provided in Movant’s Contract (attached to Proof of Claim 1-1.)

Movant’s secured claim in this case is filed in the amount of \$20,496.85. POC 1-1. The Trustee has disbursed \$18,730.55 to principal and \$1,647.00 to interest. Opposition, Dckt. 47. That leaves \$1,766.30 to be paid on the claim as provided for in the Confirmed Chapter 13 Plan (with the interest rate reduced to 4.5% from Movant’s contractual rate of 22.98%).

Thus, it appears that Movant sent to the Trustee only the amount necessary to pay the balance of the claim as provided in the Confirmed Chapter 13 Plan and retained the other \$10,162.43 that was over and above what Movant is to be paid under the Plan.

At this juncture, there are several possible ways this case may proceed. As referenced by Movant, the modification of Movant’s claim (including the interest reduction from 22.98% to 4.5% is contingent on Debtor completing the Plan. With the Plan completed, the terms are binding, the debt is paid in full and Movant’s lien becomes void under California law there being no obligation to be performed.

Pending completion of the Plan, the Trustee could use the insurance proceeds to pay off the balance of Movant's claim, thereby stopping the further accrual of interest at the lower 4.5%. However, that "Full Payment" is only payment in full if Debtor completes the Plan, with Movant still asserting a lien in the balance of the insurance proceeds. Thus, as the Trustee has done in other cases, the Trustee holds those proceeds pending further order of the court or completion of the Plan.

In some situations, it is necessary for a debtor to use the insurance proceeds to purchase a replacement vehicle of like value. In such situations, then the creditor who had the lien on the destroyed vehicle and the insurance obtains the lien on the replacement vehicle.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Credit Acceptance Corporation ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED Movant's Motion for Relief from the Automatic Stay is denied.

IT IS FURTHER ORDERED that the Chapter 13 Trustee shall hold all of the insurance proceeds relating to Debtor's Nissan Rogue, in excess of any amounts necessary to pay Movant's secured claim as provided in the Confirmed Chapter 13 Plan in this case, pending further order of this court or completion of the Chapter 13 Plan.

Requests for attorney's fees and costs, if any, shall be made as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054, 9014(c).

CALIFORNIA DEPARTMENT OF JUSTICE VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Final Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 21, 2021. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

Written oppositions were filed and the Motion set for final hearing.

The Motion is granted, the court determining that the injunctive relief ordered in the State Court Judgment is excepted by 11 U.S.C. § 362(b)(4) from the scope of the automatic stay, and no further relief is required.

California Department of Justice ("Movant") seeks permission to enforce the non-monetary judgment provisions granted in *People of the State of California v. Pro Network Tools, Inc., et al.*, Superior Court of California, County of San Francisco, Case No. CGC- 15- 545177 (the "State Court Litigation"). Movant has provided the Declaration of Brendan Ruddy to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Loraine A. Dixon ("Debtor").

Movant argues that in order to enforce the Superior Court non-monetary judgment provisions, under the injunction imposed, exemption from stay is necessary to prevent further unfair practices and prevent debtor from concealing assets to minimize her restitution liability. Motion, Dckt. 62. Movant argues relief is warranted 11 U.S.C. § 362(b)(4) as the judgment was obtained through the Attorney General's police and regulatory powers. *Id.* Therefore, the non-money judgment provisions are

exempt from the stay. *Id.*

CHAPTER 13 TRUSTEE’S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed an Response on October 11, 2021. Dckt. 68. Trustee asserts that Trustee has not made any disbursements to the creditor Movant. No plan is yet confirmed and while a status conference was scheduled for November 16, 2021 at 9:00 AM PST on Creditor’s Objection to Confirmation, the Judge presiding over the conference recused himself and no new conference date has been set. Trustee reasserts the Movant’s position that they are seeking to enforce their judgment (aside from the money judgment provisions) and seek exemption from the stay because the judgment was obtained through the Attorney General’s police and regulatory powers under 11 U.S.C. § 362(b)(4). Trustee also notes that Movant does not specify which particular non-monetary provisions are to be enforced, and the Movant did not file their declarations separately as required under LBR 9004-2(c-d)(1).

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 11, 2021. Dckt. 74. Debtor asserts that under 11 U.S.C. § 362(a), the stay is operative against any judgment obtained prior to the commencement of the bankruptcy case under that section, as the court will have jurisdiction over their claim. Therefore, the Movant’s voluntary appearance in court, without raising objections about jurisdiction, waives their ability to make objections about their judgment being under the jurisdiction of the court and under the stay.

Furthermore, Debtor argues that they are compliant with the California Business and Professions Code § 17203 due to the debtor no longer operating a business and filing proof of unemployment. The Debtor does not object to an injunction on her ability to engage in commercial transactions with the State of California for 10 years, nor does the Debtor oppose to providing yearly tax returns in compliance with the U.S. probation office. However, Debtor does not agree to any additional demands from the California Department of Justice as a participating creditor outside of those from the U.S. Probation Office or this court.

Finally, Debtor argues that the continuation of a proceeding under 11 U.S.C. § 362(b)(4) is unnecessary as there is no public safety issue or risk. Debtor claims that the pecuniary purpose test is not applicable as the Debtor no longer is employed in the profession that caused the judgment and no longer works in a field which puts the party at risk. While Debtor recognizes that the California Department of Justice is a government entity undertaking government action, the public safety element required to lift the stay is not pertinent under these facts and the money judgment is to be paid to the Movant under the Chapter 13 plan.

APPLICABLE LAW

11 U.S.C. § 362(b)(4)

The court begins with considering the provisions of 11 U.S.C. § 362(b)(4) which excepts actions and proceedings from the automatic stay to enforce police or regulatory powers of a governmental unit. 3 COLLIER ON BANKRUPTCY ¶ 362.05[5] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). This includes the enforcement of certain judgments other than money judgments, except those

pursuant to § 362(a)(2). *Id.* at [5][a]. Two tests have been developed to determine whether the judgment will be enforced: the pecuniary purpose test and the public policy test.

Under the pecuniary purpose test, the court asks whether the governmental unit is acting pursuant to a matter of public safety and welfare rather than a governmental pecuniary interest. *Id.*; *In re Berg*, 230 F.3d 1165 (9th Cir. 2000); *In re First All. Mortg. Co.*, 264 B.R. 634 (C.D. Cal. 2001); See generally *PBGC v. LTV Corp.*, 496 U.S. 633 (1990).

Fraud has been sustained as a valid basis for invoking the pecuniary purpose exception. *In re First All. Mortg. Co.*, 264 B.R. 634, 646 (C.D. Cal. 2001) (affirming the *Midlantic Nat'l Bank v. New Jersey Dep't of Env'tl. Prot.*, holding where a “[G]overnmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay”); *City & Cty. of San Francisco v. PG & E Corp.*, 433 F.3d 1115 (9th Cir. 2006) (holding that if a restitution claim was designed to deter future conduct and penalize past unlawful conduct, then the government action would satisfy the “police or regulatory” action exemption).

Under the public policy test, the court asks whether the government action is designed to effectuate public policy rather than to adjudicate private rights. *Id.*; *Lockyer v. Mirant Corp.*, 398 F.3d 1098 (9th Cir. 2005); *NLRB v. Edward Cooper Painting, Inc.*, 804 F.2d 934, 942 (6th Cir. 1986). Actions that advantage a discrete and identifiable set of individuals would fail the public interest test. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005); *City & Cty. of San Francisco v. PG & E Corp.*, 433 F.3d 1115 (9th Cir. 2006).

As defined in Ninth Circuit jurisprudence, fraud actions by government agencies plainly satisfy the public policy test as enforcement of those laws are directed towards preventing public harms, not protecting or enforcing the rights of public parties. *California ex rel. Brown v. Villalobos*, 453 B.R. 404, 415 (D. Nev. 2011) (holding that laws governing securities fraud, unlicensed activities, and unfair competition are directed at addressing public harms); *City & Cty. of San Francisco v. PG & E Corp.*, 433 F.3d 1115, 1125-26 (9th Cir. 2006); See Also *In re Bloomfield Nursing Operations, LLC*, 609 B.R. 185 (N.D. Tex. 2019). The California Supreme Court explicitly cited codes §§ 17200 *et seq.* in *People v. Pac. Land Rsch. Co* as being designed for protecting public interests. *People v. Pac. Land Rsch. Co.*, 20 Cal. 3d 10, 569 P.2d 125 (1977) (holding that civil action brought by a governmental entity under section 17200 “is fundamentally a law enforcement action designed to protect the public and not to benefit private parties”).

DISCUSSION

Here, Movant argues the underlying judgment meets both the pecuniary purpose test and the public policy test.

The original enforcement action sought to adjudicate the rigging scheme where Debtor intended to defraud at least ten California state agencies. Dckt. 60. The injunction sought to prevent future harm by preventing the Debtor from continuing their business. *Id.* The injunctive relief includes permanently restraining and enjoining Debtor from engaging in any commercial transaction with the State of California. *Id.* Here, because Movant seeks relief from the stay on the grounds of preventing fraud, the pecuniary purpose test is met.

As provided in the Declaration of Brendan Ruddy in Exhibit A (Dckt. 62), the enforcement action judgment is entered pursuant to California Business and Professions Code Section 17200 *et seq.* Because these codes are designed for protecting public interests, the judgment effectuates public policy. As Movant describes, the Enforcement Action “did not primarily advantage any discrete or identifiable individuals or entities, and was expressly brought on behalf of the People of the State of California pursuant to statute . . .”. Dckt. 60 at 6. Bringing this action on behalf of the People of the State of California serves the broader public’s interest. Therefore, continuing enforcement of this injunction satisfies the public policy test.

A copy of the State Court Judgment is attached to the Declaration of Mr. Ruddy, Dckt. 62 at 5-12. In the Motion, Movant seeks relief as to the non-monetary portions of the Judgment, but does not clearly specifically identify them. While it may seem to be an obvious point, to avoid any confusion created for a State Court Judge or possible future bankruptcy litigation, the court identifies them in this Ruling and will so do in the order confirming that the stay does not apply to specific provisions of the State Court Judgment.

The non-monetary recovery relief granted in the State Court Judgment to Movant consists of the following:

A. State Court Judgment, Section IV. Injunction, which provides:

1. Debtor is “permanently restrained and enjoined from engaging in any commercial transaction with the State of California for a period of ten (10) years from the date of entry of this Judgment, either in her personal capacity or through the acts of any enterprise of which she is an owner, officer, partner, or majority shareholder or otherwise has indirect or direct control.” State Court Judgment, ¶ 8.
2. Debtor “shall provide to the Attorney General on or before June 30 of each year from 2021 to 2025, or until all payments pursuant to Paragraph 10 below are paid, copies of all of the following documents:
 - a. Defendant Dixon's most recent Federal and State Tax Returns;
 - b. A copy of Defendant Dixon's then current credit report from one of the three consumer credit bureaus;
 - c. Proof of Defendant Dixon's employment (pay stub, W-2);
 - d. Copies of any and all financial disclosures Defendant Dixon provides the U.S. Probation Office.

Exhibit A; State Court Judgment, p. 3; Dckt. 80 at 6.

The above injunctive relief provisions were agreed to as part of resolving the criminal prosecution and addressing the violation of law – Bid Rigging. This court reads these information disclosure requirements as part of the necessary information that the State of California needs to “police” that Debtor is not becoming involved in enjoined acts. This information, which the State of California

may share with the Chapter 13 Trustee, who has the right and duty to be current on all of Debtor's post-petition and post-confirmation finances, is not for payment of the debt.

In her Opposition, Debtor argues that the judgment is entered, there is a monetary obligation, and she does not oppose this court entering an injunction as part of a Chapter 13 Plan for Debtor to be enjoined for ten years. Presumably, such duplicate federal court injunction would have the Debtor provide the same documents to the Chapter 13 Trustee and Movant. The court does not see the need for a duplicate federal injunction.

The court determines that acts relating to the injunctive relief ordered in the State Court Judgment are within the scope of 11 U.S.C. § 362(d)(4) for the police and regulatory powers of the State of California and not the enforcement of a money judgment. ^{Fn.1.}

FN. 1. Debtor has filed a sixty (60) month plan in this case to be funded with \$1,130 a month for sixty (60) months. Plan, ¶¶ 2.01, 2.03; Dckt. 4. That will generate \$67,800 in Plan funds, which after payment of the Trustee's fees (10%) there remains \$61,020 for disbursement through the Plan. Debtor's counsel is to be paid \$1,000 through the plan, leaving \$60,000 for creditor claims.

In Class 2 of the Plan, Debtor provides for paying Movant \$56,000.00, with 2% interest, over the sixty (60) months, with the monthly plan disbursement to be \$982.00. These disbursements total \$61,020, which is \$1,020 more than there are funds in the Plan.

The court shall issue an order confirming that the stay does not apply to the specified injunctive relief and that the request for relief from the stay is moot.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Exemption from Automatic Stay or for Relief from the Automatic Stay filed by California Department of Justice ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the following non-monetary injunctive relief provisions in the State Court Judgment entered in *People of the State of California v. Pro Network Tools, Inc., et al.*, Superior Court of California, County of San Francisco, Case No. CGC- 15- 545177 are excepted pursuant to 11 U.S.C. § 362(b)(4) (police and regulatory acts) from the automatic stay provisions 11 U.S.C. § 362(a) as applicable to Loraine Ann Dixon ("Debtor"):

State Court Judgment, Section IV. Injunction (Exhibit A; State Court Judgment, p. 3; Dckt. 80 at 6.), which provides:

- A. Debtor is “permanently restrained and enjoined from engaging in any commercial transaction with the State of California for a period of ten (10) years from the date of entry of this Judgment, either in her personal capacity or through the acts of any enterprise of which she is an owner, officer, partner, or majority shareholder or otherwise has indirect or direct control.” State Court Judgment, ¶ 8.
- B. Debtor “shall provide to the Attorney General on or before June 30 of each year from 2021 to 2025, or until all payments pursuant to Paragraph 10 below are paid, copies of all of the following documents:
 - a. Defendant Dixon's most recent Federal and State Tax Returns;
 - b. A copy of Defendant Dixon's then current credit report from one of the three consumer credit bureaus;
 - c. Proof of Defendant Dixon's employment (pay stub, W-2);
 - d. Copies of any and all financial disclosures Defendant Dixon provides the U.S. Probation Office.

IT IS FURTHER ORDERED, the court determining that the above injunctive relief is not subject to (excepted from by operation of law, 11 U.S.C. § 362(b)(4)) the provisions of the 11 U.S.C. § 362(a) automatic stay, no affirmative relief from the stay pursuant to 11 U.S.C. § 362(d) is required.

No other or additional relief is granted.

Debtor's Atty: Peter Macaluso
Creditor's Atty: Brendan Ruddy [California Dept. of Justice]

Notes:

Chapter 13 case transferred to Judge Ronald H. Sargis on 10/4/21 [Dckt 65]

Notice of Rescheduled Pre-Evidentiary Hearing Scheduling Conference filed 10/6/21 [Dckt 70]. No pleadings or status reports required from the Parties.



Prior to this case being assigned to the current judge, a hearing was conducted on June 8, 2021 concerning the Objection to Confirmation of the Chapter 13 Plan. In the Civil Minutes from the hearing, the court noted the following:

1. The compliance with 11 U.S.C. § 1325(a)(5) and the retention of the lien. The parties have indicated that an expressed provision in an Order Confirming will resolve this issue.
2. The creditor accepts the increased payment to the CA Dept. of Justice in satisfaction of the second issue.
3. The only remaining issue is the valuation of the 22,500 shares of the company Tanium, Inc. There is a factual dispute concerning the value of these shares and the given questions raise problems under 11 U.S.C. § 1325(a)(4) and 11 U.S.C. § 1325(a)(3) and (a)(7).

Civil Minutes, Dckt. 48.

**Objection to Confirmation Filed
By The State of California**

The State of California ("Creditor") has obtained a State Court Judgment against the Debtor. As this court has addressed in the context of another Motion, the State Court Judgment has non-monetary injunctive relief provisions and a \$56,000.00 monetary judgment award. Creditor asserts this obligation is nondischargeable.

It is asserted that the State Court Judgment “creates a judgment lien” that attaches to various assets, including Debtor’s real property. Proof of Claim 1-1 filed by Creditor includes an Abstract of Judgment filed with the Placer County Recorder (Exhibit B).

While the face amount of the judgment is \$56,000, the state asserts that there are additional contingent amounts that could come due, as well as 10% post-judgment interest.

As discussed in the Civil Minutes above, Creditor asserts that the 22,500 shares of stock in Tanium are not worth \$1.00 as stated by Debtor, but have a value ranging from \$180,000 to \$337,000. Creditor asserts that there are substantially more assets to fund the Plan in this case.

Additionally, the plan does not provide for Creditor’s lien. The court notes that the Plan does provide for Creditor in Class 2 of the Plan - Secured Claims Modified by the Plan. These Class 2 provisions include lien retention, interest requirements, and adequate protection payments.

Creditor also concludes that this case was not filed, and is not being prosecuted, in good faith in light of the above and the defective service on Creditor of the commencement of this case and proposed plan.

Opposition by Debtor and Response of Trustee

Most facts are not in dispute. Debtor does assert that the service was not defective. Additionally, the additional amounts that Creditor could claim are contingent on post-petition events.

Debtor also directs the court to the provisions of the Plan providing for protection of Creditor’s lien.

Debtor states that the Plan may be amended to increase the interest rate to 10% per annum, which would increase the monthly plan payment to \$1,370 from the proposed \$1,130, and increase Creditor’s Plan distribution to \$1,190 from \$982.

Debtor also asserts that the case and plan have been filed and prosecuted in good faith.

The Chapter 13 Trustee responded (Dckt. 42), first noting that Tanium, Inc., the entity in which Debtor owns 22,000 is reported as having \$440.2 Million in revenues in 2019. The Trustee also questions Debtor’s good faith.

Scheduling Order and Evidentiary Hearing

A Scheduling Order was entered on June 11, 2021 (Dckt. 49), with discovery closing on October 19, 2021.

NOVEMBER 2, 2021 SCHEDULING CONFERENCE

At the Scheduling Conference, **XXXXXXX**

NATIONSTAR MORTGAGE LLC VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, on September 21, 2021. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is XXXXXXX.

Nationstar Mortgage LLC ("Movant") seeks relief from the automatic stay with respect to Kenneth Kip Scammon's ("Debtor") real property commonly known as 22484 Lake Helen Pl, Cottonwood, California ("Property"). Movant has provided the Declaration of Mary Garcia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made nine post-petition payments, with a total of \$11,525.97 in post-petition payments past due and a total of \$12,763.97 in post-petition delinquencies. Declaration, Dckt. 39. The additional costs include attorneys fees and th bankruptcy filing fee. *Id.*

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed an Response on October 12, 2021. Dckt. 43. Trustee asserts that Debtor is current under the confirmed plan. Movant is classified as a Class 1 creditor. Trustee has disbursed \$25,368.78 towards the Debtor's ongoing mortgage and \$8,181.38 in arrears. Additionally, Trustee confirms two payments of \$1,284.87 to Movant for July and August payments. Trustee asserts this would put Debtor only six payments behind instead of nine. However, only two payments would put Debtor seven payments behind, not six.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 14, 2021. Dckt. 46. Debtor asserts they had a six month forbearance, of which Debtor was not notified of until March 2021. Debtor further asserts that a loan modification request to move three missed post-petition payments to the end of the loan period, and Debtor claims they will file a declaration itemizing payments made to date.

DEBTOR'S DECLARATION

Debtor filed a Declaration on October 26, 2021. Debtor states they have made every Chapter 13 Plan Payment from July 2021 through October 2021. Nationstar sent Debtor a loan modification to place arrearages at the end of the loan. Exhibit 2, Dckt. 50. Debtor disagrees they are six months delinquent. Debtor requests the court continue the Motion for Relief for an appropriate date to obtain Court Approval for a loan modification.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$178,796.76 (Declaration, Dckt. 39), while the value of the Property is determined to be \$210,000.00 as stated in Schedules A/B and D filed by Debtor.

At the hearing, ~~XXXXXXXXXX~~

~~11 U.S.C. § 362(d)(1): Grant Relief for Cause~~

~~Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. See *J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. See *In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.~~

~~No other or additional relief is granted by the court.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~_____ The Motion for Relief from the Automatic Stay filed by Nationstar Mortgage LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~_____ **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are not vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 22484 Lake Helen Pl, Cottonwood, , California (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.~~

~~_____ No other or additional relief is granted.~~

U.S. BANK, NATIONAL
ASSOCIATION VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on October 19, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Annul the Automatic Stay is granted.

US Bank, NA ("Movant") seeks relief from the automatic stay with respect to Derek Wolf's ("Debtor") real property commonly known as 7995 Alta Vista Lane, Citrus Heights, California ("Property"). Movant has provided the Declaration of Brian Gaske to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues on October 12, 2021, without any notice of filing of Debtor's fourth consecutive bankruptcy case, Movant conducted its foreclosure sale on the property. Motion, Dckt. 11. At the time of the foreclosure sale, Debtor was due 25 months worth of mortgage payments, with a total of \$25,150.25 in payments past due. Declaration, Dckt. 19. Movant specifies that due to the three prior consecutive bankruptcies prior to this one—all of which were dismissed—the nature of these payments as post or pre petition is not clear.

Trustee's Non-Opposition

Trustee has filed a non-opposition to this motion on October 26, 2021 (Dckt. 21). Trustee

reaffirms that the Debtor has failed to file the following documents:

- a. Chapter 13 Plan
- b. Form 122C-1 Statement of Monthly Income
- c. Schedule A/B – Real and Personal Property
- d. Schedule C – Exempt Property
- e. Schedule D – Secured Creditors
- f. Schedule E/F – Unsecured Claims
- g. Schedule G – Executory Contracts
- h. Schedule H – Codebtors
- i. Schedule I – Current Income
- j. Schedule J – Current Expend.
- k. Statement of Financial Affairs
- l. Summary of Assets and Liabilities

Furthermore, Trustee notes the Creditor’s Motion for Notice of Sale was recorded against said property on September 15, 2021 to schedule a foreclosure sale for October 12, 2021. This was the same time in which the bankruptcy was filed, and the Debtor was still delinquent for 25 months for no less than \$25,150.25 (Dckt. 11).

Review of File

Debtor commenced this case on October 12, 2021. On October 27, 2021, a chapter 13 Plan was filed. Dckt. 24. The Plan provides for monthly payments by Debtor of \$1,500 for sixty (60) months. Plan, Nonstandard Provisions; Dckt. 24 at 7. Additionally, Debtor will pay the Plan off early “if awarded settlement from Social Security.” *Id.*

The only claim provided for in the Plan is Movants, for which Debtor is to pay \$500 a month toward the 29,254.55 arrearage and \$1,016.32 for the post-petition monthly payment. These two payment total \$1,516.32, which is slightly more than the \$1,500 a month play payment.

However, the Debtor has not accounted for the Chapter 13 Trustee fees paid out of the \$1,500 a month payment. The Trustee’s fee is 10%, so from the \$1,500 payment, there is deducted \$150 for Trustee fees. This results in Debtor’s monthly payment being \$166 short each month.

Debtor does not list any other creditors on Schedules D or E/F. Dckt. 23.

On Schedule I, Debtor states that he has \$1,650 a month in net income from his business, \$358 in CALPERS Death Benefit, and \$750 in rents, for total monthly income of \$2,758. *Id.* At the end of Schedule I Debtor states that a possible increase in income can occur “If I receive claim from Social Security.” He also states, “X Wife + Daughter recently received 5.5 Mil Judgment From RUCCI.”

For expenses, on Schedule J Debtor lists \$1,258 in total expenses, with nothing for self-employment or income taxes. For Expenses, Debtor states having:

- A. Food and housekeeping supplies.....(\$375)
 1. Assuming (\$50) for housekeeping supplies, that leaves (\$325) for food,

which in a 30 day months equals \$3.61 cents per meal.

- B. Debtor has no medical or dental expenses.
- C. Debtor has no home repair or maintenance expenses.

Id.

At the end of Schedule J, in response to whether Debtor expects an increase or decrease in expenses, Debtor states:

If Rushmore will finally be fair and
recognize my Mod Package that they have
on file.

Schedule A - Value of Property

On Schedule A/B Debtor lists the property that is the subject of the foreclosure sale as having a value of \$310,000. *Id.* On Schedule D Debtor lists Creditor as having a claim of \$145,985. *Id.* In the Motion, Movant states that as of the time of the foreclosure sale, the balance owed was \$163,476.40, and that the buyer at the sale paid \$276,000.00. Motion, ¶¶ 7, 8; Dckt. 11. Presumably there will be almost \$100,000+/- in surplus sales proceeds to be disbursed to Debtor if the stay is annulled.

DISCUSSION

Annulment of Stay

As is well established in the Ninth Circuit, an act taken in violation of the automatic stay is void, not merely voidable. *Far Out Productions, Inc. v. Oskar et al.*, 247 F.3d 986, 995 (9th Cir. 2001); (*In re Schwartz*), 954 F.2d 569, 571 (9th Cir. 1992).

Congress provides for the court to annul the automatic stay so as to render what was void to not be void. However, retroactive annulment of the automatic stay is within the discretion of the court. *Nat'l Envtl. Waste Corp. v. City of Riverside (In re Nat'l Envtl. Waste Corp.)*, 129 F.3d 1052, 1054 (9th Cir. 1997). The court, in making a case-by-case review, must balance the equities to determine if annulment is justified. *Id.* at 1055. Though not dispositive, most courts consider two factors: "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.*

In re Fjeldsted, the bankruptcy Appellate Panel for the Ninth Circuit expanded the factors a court may consider when deciding whether to annul the stay: the number of times a debtor has filed a petition; the extent of any prejudice, including to a bona fide purchaser; the debtor's overall good faith; the debtor's compliance with the Code; how quickly the creditor moved for annulment; and how quickly the debtor moved to set aside the action which occurred. *In re Fjeldsted*, 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003).

The court reviews the various framework of factors and states how they apply in this Motion as follows:

Nat'l Env'tl. Waste Corp Factors

- (1) Whether the creditor was aware of the bankruptcy petition;

Based on the evidence presented, Movant was not aware of this bankruptcy filing and the existence of the automatic stay. The Movant conducted due diligence by running a PACER search prior to the foreclosure sale, and Movant received no notice of the filing as the day of the sale was also the date of filing. Dckt. 4.

- (2) Whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor.

The evidence as it stands shows Movant would be prejudiced if the stay is not annulled. Movant had already conducted a sale in good faith and with a bona-fide, third party purchaser, and Movant conducted the sale with their due diligence to ensure they were not impeding on the Debtor's rights. Debtor failed to file or notify the Movant at any time between the Notice of the Sale on September 15, 2021 and the date of the sale on October 12, 2021. Additionally, Debtor waited until the date of the sale to file this Chapter 13 case. This unreasonable delay in filing and proper notice directly prejudices the creditor by thwarting their good-faith foreclosure sale of the home for almost 2 years of delinquency. To not annul the stay would cause the bona fide purchaser to be harmed as they relied on the assumption the sale was legally binding and proper to purchase the property.

In Re Fjeldsted Factors

Under the *In re Fjeldsted* factors, the Panel looked at refining and providing further guidance to the court as to factors that may apply. Relevant factors here include:

- A. Whether creditors knew of the stay but nonetheless took action, thus compounding the problem;

Reiterating the foregoing, Movant was unaware of the bankruptcy. Movant did not receive notice of the bankruptcy on the master address list provided by the Debtor. Additionally, the Bankruptcy was filed on the exact date of the foreclosure sale, giving little time to receive notice even if it was properly sent. Movant has taken no further action since receiving notice, including issuing, executing, delivering, and/or recording the foreclosure deed.

- B. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violating conduct;

Again, the Bankruptcy was filed on the exact date of the foreclosure sale: October 12, 2021. This Motion was filed approximately seven (7) days after the petition was filed and the sale.

- C. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;

Movant has taken no further action regarding the sale since receiving notice of the bankruptcy case. Therefore, Movant has not continued to act in violation of the stay.

D. Whether annulment of the stay will cause irreparable injury to the debtor;

There is no showing that annulling the stay will cause irreparable injury to the Debtor. Debtor has filed no motion nor made any indication they will be harmed. In contrast, Movant will be harmed with incurring additional fees if the stay is not annulled. Said fees will include additional costs incurred in another foreclosure sale and paying additional accrued and unpaid interest while the Debtor enjoys collecting rent on the Property.

The court grants the relief requested and the automatic stay is annulled, effective as of the commencement of this bankruptcy case for Movant.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court. The Movant argues grounds for relief is adequate due to the foreclosure sale, which was conducted with a bona-fide purchaser and lack of notice of the stay, needing to be executed. Movant further argues that the 14 day stay period should be waived to prevent further abuse of the bankruptcy process by the debtor.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Annul Automatic Stay or in the Alternative In Rem Relief From Automatic Stay filed by US Bank, NA ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are annulled and vacated effective as of the commencement of this bankruptcy case to continue to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 7995 Alta Vista Lane, Citrus Heights, California, California ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

IT IS FURTHER ORDERED that the fourteen-day stay of

enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

FINAL RULINGS

6. [21-22220-E-13](#) KENNETH FALJEAN
[RDW-1](#) Gabriel Liberman

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
10-8-21 [60]

FOR ADEQUATE PROTECTION
SAN MATEO CREDIT UNION VS.

Final Ruling: No appearance at the November 2, 2021 hearing is required.

Local Rule 9014-1(f)(2) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 8, 2021. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Movant having dismissed without prejudice this Motion as provided in Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rule of Bankruptcy Procedure 7041, 9014(c), this Matter is Removed From the Calendar.

San Mateo Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Toyota Highlander, VIN ending in 7249 ("Vehicle"). The moving party has provided the Declaration of Dani Robinson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Kenneth John Faljean ("Debtor").

Movant argues Debtor has not made 4 post-petition payments, with a total of \$1,032.00 in post-petition payments past due. Declaration, Dckt. 62. Movant also provides evidence that is a pre-petition arrearage of \$1,963.94. *Id.*

TRUSTEE'S NONOPPOSITION

Trustee filed a nonopposition on October 18, 2021. Trustee has not disbursed any funds to

creditor.

CONFIRMATION OF CHAPTER 13 PLAN AND REQUESTED DISMISSAL OF MOTION

On October 27, 2021, the court's order confirming Debtor's Chapter 13 Plan in this case was entered. Dckt. 72. The Plan provides for Movant's Claim in Class 3, the surrender of the collateral and termination of the automatic stay as part of the confirmation of the Plan. Plan, ¶¶ 3.09, 3.11(a); Dckt. 38.

On November 1, 2021, Movant filed a "Withdrawal" of this Motion, which the court construes to be a voluntary dismissal without prejudice of this Motion to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rule of Bankruptcy Procedure 7041, 9014(c), there having been no opposition to the Motion filed.

Movant having dismissed the Motion without prejudice, the matter is removed from the calendar.

7.	<u>21-21883-E-13</u> <u>KGR-1</u> YAMAHA MOTOR FINANCE CORP. VS.	WILLIAM VANNUCCI Mikalah Liviakis MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY 10-6-21 [72]
----	---	--

Final Ruling: No appearance at the November 2, 2021 hearing is required.

The Motion for Relief from the Automatic Stay is dismissed without prejudice.
--

Yamaha Motor Finance Corp. ("Creditor-Movant") having filed a "Withdrawal of Motion" on October 22, 2021, Dckt. 82; no prejudice to the responding party appearing by the dismissal of the Motion; Creditor-Movant having the right to request dismissal of the Motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Chapter 13 Trustee"; the Ex Parte Motion is granted, Creditor-Movant's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Yamaha Motor Finance Corp. ("Creditor-Movant") having been presented to the court, Creditor-Movant having requested that the Motion itself be dismissed pursuant to Federal

Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 82, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is dismissed without prejudice.